

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of Invasive  
Species/Infested Waters Citation  
#128174 Issued to Thomas E. Straub

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

This matter came on for a Prehearing Telephone Conference on July 16, 2012. Administrative Law Judge (ALJ) Manuel J. Cervantes, Conservation Officer Jackie Glaser, and Thomas E. Straub (Respondent) participated in the Conference. The parties agreed that no formal hearing would be needed and that the ALJ could make a recommendation based on the record created during the Prehearing Telephone Conference. To that end, Officer Glaser and Thomas Straub both testified under oath. The OAH record closed at the conclusion of the Prehearing Conference.

**STATEMENT OF ISSUE**

Did Respondent violate Minn. Stat. § 84D.10, subd. 4(b), when he transported his watercraft on a public road with the drain plug in place?

The ALJ concludes that Respondent violated Minn. Stat. § 84D.10, subd. 4(b), on May 18, 2012. Accordingly, the Administrative Law Judge **RECOMMENDS** that the Commissioner **AFFIRM** the citation.

Based on the proceedings herein, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. On May 18, 2012, the Officer observed Respondent drive off County Road 101 (a public road) onto an access area on the shore of Lake Minnetonka in Hennepin County while pulling a boat. The boat had its drain plug in place during the time it was being transported.<sup>1</sup> The boat is registered to Respondent. The Officer identified Respondent by his watercraft registration and his driver's license.

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<sup>1</sup> Testimony (Test.) of Officer Glaser.

2. On May 18, 2012, the Officer issued a citation to Respondent. The citation asserted that Respondent transported a watercraft on a public road with the drain plug in place.<sup>2</sup>

3. Respondent timely appealed the citation on June 18, 2012.<sup>3</sup>

4. Respondent testified that he has been boating on Lake Minnetonka since he was 15 years old. He stated he was not aware of the Minnesota law that requires that watercraft drain plugs must be left open while transporting watercraft on public roadways. Respondent further stated that had he known the law, he would have obeyed it.<sup>4</sup>

5. Respondent argued that he should not be found guilty of a violation because he was not personally informed that the plug on his boat was supposed to be out at all times. He noted that there were no signs posting the law at the landing where he was cited. He indicated that he put the plug in just before he left for the landing; it was his first time out for the season; and that he lives approximately four miles away from the landing. He did not deny that he transported his boat on the public roadway from his home with the drain closed.<sup>5</sup>

6. The Officer stated that this year, more than any other, the DNR has put out news releases, to all the local newspapers about the Invasive Species Law. She testified that the DNR sent news releases to every newspaper, every television news channel, and to radio stations about this law and indicating that the law would be strictly enforced this year. In addition, the DNR has begun posting signs with notice of the recent invasive species law at landings around the State as suggested by Respondent.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

## **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of Natural Resources have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 116.072, subd. 6.

2. Minn. Stat. § 84D.10, subd. 4, reads:

Persons transporting water-related equipment.

(a) When leaving waters of the state a person must drain water-related equipment holding water and live wells and bilges by removing the drain

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<sup>2</sup> Citation 128174.

<sup>3</sup> Appeal Letter (June 15, 2012).

<sup>4</sup> Straub Test.

<sup>5</sup> *Id.*

plug before transporting the water-related equipment off the water access site or riparian property.

(b) Drain plugs, bailers, valves, or other devices used to control the draining of water from ballast tanks, bilges, and live wells must be removed or opened while transporting water-related equipment.

3. The DNR Conservation Officers are authorized to issue warnings or citations to a person who violates Minn. Stat. § 84D.10, subd. 4(b), by failing to remove plugs from water-related equipment before transporting that equipment.<sup>6</sup>

4. Respondent admitted and the Officer observed that he was transporting his watercraft with the drain plug in, as charged in the citation.

5. The Department has substantiated the violation and Citation, and Respondent admitted he was transporting a boat with its drain plug in, as charged in the citation.

6. It is appropriate that the Commissioner affirm Civil Trespass Citation #128174 and require Respondent to pay a \$50 fine for violating Minn. Stat. § 84D.10, subd. 4(b).

Based on the Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

**IT IS RECOMMENDED** that the Commissioner of Natural Resources **AFFIRM** the citation issued to Thomas E. Straub on May 18, 2012.

Dated: July 26, 2012

/s/ Manuel J. Cervantes  
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MANUEL J. CERVANTES  
Administrative Law Judge

Reported: Recorded Digitally

### **NOTICE**

Pursuant to Minn. Stat. § 116.072, subd. 6 (e), the Commissioner may not issue a final order until at least five days after receipt of the report of the Administrative Law

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<sup>6</sup> See Minn. Stat. § 84D.13, subd. 4(4).

Judge. The persons to whom the order is issued may, within those five days, comment to the Commissioner and the Commissioner will consider the comments. The Commissioner must send a copy of the final decision to Thomas E. Straub. The final order of the Commissioner may be appealed pursuant to Minn. Stat. §§ 14.63-14.69. If the Commissioner fails to act within 90 days after the record closes, this recommendation will become the final decision in this matter.

## **MEMORANDUM**

Respondent admitted that he transported his boat with the drain plug intact, having replaced the plug just prior to arriving at the boat landing. Minnesota law requires that persons transporting watercraft have the drain plugs and valves removed or in the open position when transporting them on the public way.<sup>7</sup>

Respondent is not entitled to personal notice of a change in law as suggested by Respondent. Respondent's watercraft is licensed in Minnesota. Licensure is a privilege. Licensure comes with an obligation on the part of a licensee to know what the relevant laws of the State are. This fact notwithstanding, the DNR has made significant efforts to notify the public via the public media of its efforts to enforce the law within its jurisdiction.

The facts and law in this case support affirmation of Respondent's Citation.

**M. J. C.**

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<sup>7</sup> Minn. Stat. § 84D.10, subd. 4(b).